CF0000060994

(2)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No. 753 /1996

.....

Division Bench (riminal)

APPELLANT : Pradeep S/O Motilal Verma aged 21 years R/O Mahka Khurd Thana Utai Distt. Durg M.P.

(In jail)

Versus

RESPONDENT : State of Madhya Pradesh through P.S. Utai Distt. Durg M.P.

CRIMINAL APPEAL U/S 374(2)OF THE CODE OF CRIMINAL PROCEDURE

XI-HC-22

A.F.R.

(35)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

1/3/06

मामला क्रमांक C.A. No. 753/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO
& HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 753 of 1996

Appellants : Pradeep

Vs.

Respondent : State of Madhya Pradesh

Ms. Nirupama Bajpai, learned counsel for the appellant.

Shri U.N.S.Deo, learned Govt. Advocate with Shri Ravindra Agrawal, P.L. for the State/respondent.

ORAL JUDGMENT
(01.03.2006)

L.C.Bhadoo, J

The accused/appellant Pradeep has preferred this appeal under Section 374 (2) of the Code of Criminal Procedure questioning the legality and correctness of the judgment of conviction and order of sentence dated 29.03.1996 passed by learned Fourth Additional Sessions Judge, Durg in S.T. No. 131/95 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the IPC for committing the murder of Tek Singh sentenced him to undergo imprisonment for life and to pay a fine of Rs. 25,000/- and also convicted and sentenced him for committing the murder of Ravi Prakash under Section 302 of the IPC and sentenced to undergo imprisonmeht for life and to pay fine of Rs. 25,000/- and in default of payment of fine to further undergo RI for 5-5 years in each offence.

[पीछे देखिये

(36)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A. No. 753/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
2.	Case of the prosecution, in brief, is that P.W.-2 Neelkanth Verma lodged a report P-6 at police station Uttai on 27.12.92 at about 10.00 p.m. to the effect that at about 9.00 p.m. he along with Ravi Prakash (since deceased), Tek Singh (since deceased) and Pradeep (accused), all the four went towards the tube well. There they washed their mouth and went towards Pahdore Road for attending the call of nature. When Ravi reached near the *banyan tree*, accused Pradeep caught him from behind on which Ravi Verma started crying. At this he along with Tek Singh tried to rescue Ravi upon which accused Pradeep attacked Tek Singh and Tek Singh said that he has been stabbed with knife. He took Tek Singh aside and made him lay on the ground. In the meantime Ravi started running on which accused Pradeep chased him and attacked with knife. Ravi was lying by the side of the road in unconscious condition and blood was oozing out of the injuries. He raised screams on which 20-25 villagers came on the spot and in which Dilip Kumar Verma, Shiv Kumar Verma and Kant Sharan Verma were also there. Thereafter Rajendra & Hemant Kumar took the injured persons on bike for reporting the matter in the police station. Receiving this report, Ghanshyam Singh, Head Constable registered the crime under Section 307 of the IPC. However, Ravi Prakash died in unconscious condition and Tek Singh died in the hospital. At the hospital, P.W.-17 Dr. V.S. Baghel examined the injuries on the body of Ravi Prakash and Tek Singh. The post mortem on the body of Ravi & Tek Singh was conducted by P.W.-15 Dr. Prabhat Pandey on 28.12.92 and post mortem report of Ravi and Tek Singh was prepared under P-29 & P-30, Dehati Merg intimation P-1 was given by Hemant Kumar Verma. The Investigating Officer after giving notice P-2 to the panchas prepared	

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No. 753/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

panchanama P-3 of the body of Tek Singh and P-12 of the body of Ravi Prakash. The Investigating Officer also took into possession blood stained shirt, one Sandow Banyan, one half sweater, a cotton lungi and underwear of Tek Singh. One pair of V-type slippers were taken into possession from the place of occurrence under P-7 and one pair of slippers of Ravi Verma, one shawl and blood stained and plain soil from the place of occurrence were taken into possession under P-8. Blood stained soil and plain soil from the place of occurrence of incident of Tek Singh and one plastic green colour mug (*lota*) were taken into possession under P-9. Site plan P-14 was prepared by Lakhan Lal Banjare, Patwari. Accused Pradeep while in police custody gave memorandum P-15 regarding the place where he kept the weapon of offence-knife and in pursuance of that, the knife was recovered at the instance of the accused under P-16. Clothes of the accused were taken into possession under P-17 and the bicycle of the accused was taken into possession under P-20. Injury report P-21A of Ravi and P-22A of Tek Singh were prepared by Dr. V.S. Baghel. The blood stained articles were sent to Director, Forensic Science Laboratory, Sagar from where report P-28 A, P-28 B, P-28 C and P-28 D were received. After completion of the investigation, charge sheet was filed against the accused for the commission of offence under Section 302 of the IPC in the Court of Judicial Magistrate First Class, Durg who in turn committed the case to the Sessions Judge, Durg from where the learned Fourth Additional Sessions Judge received the case on transfer for trial.

पीछे देखिये

(38)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No. 753/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
3.	Prosecution in order to establish the charge against the accused/appellant examined as many as seventeen witnesses. Statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that the witnesses have so deposed against him on account of animosity and he is innocent and has been falsely implicated in the crime.	
4.	Learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced the accused/appellant as mentionec in paragraph one of the judgment.	
5.	We have heard Ms. Nirupama Bajpai, learned counsel for the accused/appellant and Shri U.N.S.Deo, learned G.A. with Shri Ravindra Agrawal, P.L. on behalf of the State.	
6.	Homicidal deaths of Ravi Prakash & Tek Singh are not in dispute. It is also not in dispute that the accused and both the deceased persons namely Ravi Prakash and Tek Singh were cousin brothers.	
7.	As far as the involvement of the accused/appellant Pradeep in committing the murder of Ravi Prakash & Tek Singh is concerned, learned counsel for the accused/appellant argued that P.W.-2 Neelkanth Verma in the cross examination has stated that he was not able to see that with which kind of weapon the accused attacked the deceased and she further argued that the incident took place in the dark night therefore it was not possible for him (Neelkanth Verma) to have witnessed the accused attacking the	

[पीछे देखिये

(39)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A. No. 753/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deceased with the said knife. Moreover the prosecution case is that Ravi Prakash ran away and thereafter he was attacked and his body was found about 40 steps away from the body of Tek Singh and in such a dark night it was not possible for Neelkanth Verma to witness the attack being made by accused Pradeep. She further argued that even the recovery witness of knife P.W.-9 Jitendra Kumar Madhania has turned hostile and the recovery of knife is also not proved.

8. On the other hand Shri U.N.S.Deo, learned G.A. with Shri Ravindra Agrawal, P.L. for the State supported the judgment of the trial Court.

9. In order to appreciate the arguments advanced by the counsel for the respective parties we have scrutinized the evidence of prosecution witnesses. P.W.-2 Neelkanth, as per the prosecution case. He was along with accused Pradeep, deceased persons Ravi Prakash and Tek Singh and all of them went together to the tube well where they washed their mouth and thereafter they proceeded towards Pahdore Road to attend the call of nature. P.W.-2 in his evidence has stated that he along with Ravi, Tek Singh and Pradeep went to attend the call of nature towards Pahdore Road and after covering certain distance Ravi Prakash raised cries. He along with Tek Singh saw that accused Pradeep had caught Ravi upon which he along with Tek Singh intervened whereupon accused Pradeep pushed them and attacked Tek Singh and thereafter he ran towards the side where Ravi Prakash ran. He enquired from Tek singh that what happened. At this Tek Singh replied that Pradeep attacked him with the knife on which he took Tek Singh on the side of the road and made him to lie on the ground and started shouting "run, run" on which the villagers

[पीछे देखिये

(40)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No. 753/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

came and thereafter they saw that Ravi was lying at a distance of 40 steps away from Tek Singh. Blood was oozing out of the injuries of Ravi Prakash and thereafter the villagers took Tek Singh and Ravi on the scooter to the police station and he lodged the report P-6.

10. In the cross examination by Mr. Dhurandar he stated that when accused Pradeep caught Ravi, he along with Tek Singh and Ravi were at a distance of 1-1 ½ feet. Ravi raised the cries but he did not speak anything. Thereafter Ravi ran away from there and he did not saw who attacked Ravi and he even could not see with which weapon the accused attacked Tek Singh but he was able to see that accused attacked Tek Singh. He also did not saw the knife in the hand of accused Pradeep. Again he said that Tek Singh told him that Pradeep has attacked him with the knife. On this only he is stating that Pradeep has attacked him with the knife. P.W.-4 Panna Lal has stated that on hearing the screams they reached on the spot and on enquiry from P.W.-2 Neelkanth he informed that the accused Pradeep has attacked Tek Singh and Ravi with the knife. They reached near Tek Singh and on enquiry from Tek Singh who was conscious, narrated that Pradeep has attacked him with a knife and then they went towards Ravi who was lying on the ground but he was unconscious and there was dark. Similar is the evidence of P.W.-5 Kant Sharan Verma that Tek Singh disclosed that Pradeep attacked him with the knife and Ravi was lying ahead in unconscious condition and blood was oozing out of the injuries on the body of Ravi & Tek Singh. Similar is the evidence of P.W.-6 Thanu Ram. P.W.-7 Ashok Kumar has also stated that Tek Singh narrated that accused Pradeep has attacked him and Ravi with the knife. P.W.-12 Ghanshyam Singh, Head Constable has stated that on the date of incident

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No. 763/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

at about 10.00 p.m. when he was on duty at police station Uttai, Neelkanth came and lodged the report P-6. Therefore from the above evidence it is established that at the time of commission of the crime in question, accused Pradeep, eyewitness Neelkanth, deceased Tek Singh and Ravi were together. They went together to the tube well and from there they went to attend the call of nature and after covering certain distance, before they could sit to attend the call of nature, the incident took place. It is true that P.W.-2 Neelkanth has stated that due to darkness he was not able to see that with which kind of weapon accused Pradeep attacked but deceased Tek Singh was conscious and he clearly stated that accused attacked him with the knife and the same statement was made by him to other witnesses whose name has been mentioned earlier. Thus, deceased Tek Singh made oral dying declaration before these witnesses which was voluntary and immediate and before whom there was no occasion to make a false statement implicating the accused in the crime in question.

11. The fact that all the four persons – the two deceased, accused and eye witness Neelkanth were together has not been disputed. When the deceased persons were seen alive with the accused and the eye witness and the incident of murders of Ravi Prakash and Tek Singh was so proximate and there is no evidence that in between the short time when they started to attend the call of nature and the incident happened and anybody else came there. P.W.-2 Neelkanth has clearly stated that accused attacked Tek Singh and Tek Singh made a dying declaration that accused attacked him with the knife. This establishes that the accused attacked with the knife. Now coming to the attack upon Ravi is concerned, as per Neelkanth, this witness in the first instance stated that the accused

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 753/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

caught Ravi on which he raised the screams whereupon he and Tek Singh intervened and separated Pradeep from Ravi whereupon Pradeep attacked Tek Singh with a knife and after getting himself free from Tek Singh and Neelkanth he chased Ravi Prakash and body of Ravi Prakash was found sustaining injuries. Therefore it is established that accused Pradeep was the author of the stabbed wounds inflicted upon Ravi.

12. Thus, based on the dying declaration of Tek Singh and witnessing of the crime by P.W.-2 Neelkanth it is established that the accused Pradeep was the author of the injuries inflicted on the body of Tek Singh and Ravi Verma. This fact stands further corroborated by the fact that within no time P.W.-2 Neelkanth lodged the report P-6 in the police station Uttal and in which he has clearly mentioned that accused Pradeep attacked Ravi and Tek Singh with knife. Even the injury reports and post mortem report which have been proved by P.W.-17 Dr. V. S. Baghel and P.W.-15 Dr. Prabhat Pandey as various cuts and incised wounds were found on the body of Ravi and Tek Singh which are caused by sharp and hard weapon. Therefore this medical evidence is suggestive that the injuries which were found on the body of Ravi and Tek Singh were of knife.

13. Even though P.W.-9 Jitendra Kumar has turned hostile and has not supported the prosecution case but P.W.-14 B.S.Thakur, Police Officer has stated that on 31.12.92 accused Pradeep while in police custody gave information P-15 that he has kept the knife in his village in the house of one Ramdin Verma and he can get recovered the same and in pursuance of that took him to the place where the weapon of offence-knife was concealed and he produced the same after bringing the same from the

[पीछे देखिये

(43)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. No. 753/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-9-	

house of Ramdin Verma and the same was taken into custody under P-16 which was stained with blood and clotted blood was present on the knife. As per the report of Forensic Science Laboratory P-28 D, the knife and clothes of the accused were found stained with blood. Therefore in the circumstances, recovery of knife stained with blood at the instance of the accused further corroborates the prosecution case. P.W.-3 Jeevan Lal who is none else than the uncle of accused Pradeep and father of Ravi Prakash Verma has stated that in the year 1985, a case regarding theft of a golden necklace of his wife was pending in the Court and some summon was issued in that case and accused Pradeep came with that summon to their house. At this they replied that it is a Government summon and therefore some Government person ought to have brought the same, upon which accused Pradeep threatened him saying that he has been insulted and he will see them and the said altercation took between Ravi Prakash and Pradeep and he threatened Ravi. Therefore from this fact and also the fact that there was a pond of the joint family in the village which was given by the family for fishing contract and in that contract some amount of Rs. 25,000/- which was paid by the Contractor to Yashwant, brother of the accused and the same was not distributed among the co-sharers, on that account there was a dispute and thus there was a motive behind the commission of the crime also.

14. In the result the cumulative effect of all the above factors is suggestive and it is established that the accused was the author of the crime in question in which the murder of Ravi & Tek Singh was committed. For the foregoing reasons we do not find any substance in this appeal as there is no illegality or infirmity in the finding of the trial Court.

[पीछे देखिये

XI-HC-22

(44)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A. No. 753 सन् 96/2009

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -10-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
15.	In the result, the appeal is devoid of merits and the same is liable to be dismissed and it is hereby dismissed **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **DHIRENDRA MISHRA** **Judge**

Sd/-

ANAND PRINTERS, JBP.